



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/164710

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on April 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly determined that the Petitioner was overpaid BadgerCare+ benefits between July 1, 2014 through December 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kristine Kostroski, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 3, 2013, the Petitioner completed an on-line Six Month Report Form (SMRF) in which she reported working two hours per week at \$9.00 per hour and that her husband worked

40 hours per week at \$15.25 per hour. The Petitioner also indicated that she received child support income for one child, ER in the amount of \$87.00 per month. The Petitioner electronically signed the SMRF indicating the information was correctly and complete to the best of her knowledge. (Exhibit 7)

3. On November 21, 2013, the Petitioner provided verification of her employment, via letter from her assistant sales manager. (Exhibit 9)
4. Also on November 21, 2013, the Petitioner provided the agency with her husband's paystubs for October 17, 2013, October 24, 2013, October 31, 2013 and November 7, 2013. The paystubs showed that the husband earned regular pay, vacation pay, overtime pay, holiday pay, profit sharing income, sick pay and something called "Time Results", although during the pay periods covered by those paystubs, the Petitioner's husband earned income in the categories of Regular pay, vacation pay, sick pay, and overtime. (Exhibit 10)
5. Effective April 1, 2014, MAGI rules were applied to existing BadgerCare+ cases as they came up for renewal.
6. On April 24 and 25, 2014 the agency took action to add Petitioner's newborn child to her case. (Exhibit 4)
7. On May 20, 2014, the Petitioner completed a renewal over the telephone and the agency sent her an application summary. (Exhibits 4 and 12)
8. In the May 20, 2014 renewal, the Petitioner reported working four hours per week at \$9.00 an hour and that her husband worked 39.98 hours per week at \$15.25 an hour. The Petitioner also reported receiving child support in the amount of \$176.85 per month for one child and \$87.00 per month for a second child.

The Petitioner further reported she and her husband would be filing their taxes jointly and that they would be claiming three of their children as tax dependents.

The Petitioner electronically signed the application summary, indicating the information was correct and complete to the best of her knowledge. (Exhibit 12)

9. On May 24, 2013, the Petitioner provided income verification in the form of an e-mail from the portrait manager. (Exhibit 13)
10. On that same date, the Petitioner provided an Employer Verification of Earnings Form from her husband's employer indicating that he typically works 40 hours per week at \$15.25 per hour. (Exhibit 14)
11. On May 29, 2014, the Petitioner submitted her husband's pay stubs for April 24, 2014, May 1, 2014, May 8, 2014, May 15, 2014 and May 22, 2014. The paystubs showed that the husband earned regular pay, vacation pay, overtime pay, holiday pay, profit sharing income, sick pay, something called "Time Results" and retroactive pay. (Exhibit 15)
12. On November 5, 2014, the Petitioner completed an on-line SMRF, in which she again reported her employment and her husband's employment though she indicated that there would be a change effective December 2014. The Petitioner again reported receiving child support for ER in the amount of \$87.00 per month and she reported receiving child support for a second child in the amount of \$235.00 per month. The Petitioner signed the SMRF indicating that the information was correct and complete to the best of her knowledge. (Exhibit 18)
13. On February 3, 2015, the agency sent the Petitioner a Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notice, claim number [REDACTED], indicating that she was overpaid benefits in the amount of \$2,533.26 for the period of July 1, 2014 through December 31, 2014. (Exhibit 32)

14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 18, 2015. (Exhibit 1)

DISCUSSION

An “overpayment” occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of application regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Per BEH+ §28.3, overpayments may not be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

“The benefit recovery period for incorrectly paid benefits shall be limited to one year prior to the date that the overpayment is discovered.” *Wis. Admin. Code §DHS 2.04(1)(b)*

Rules for Calculating Modified Adjusted Gross Income (MAGI)

MAGI rules are applied to new eligibility determinations made April 2014 or later. *BEH §2.3.3* Thus, at the time the Petitioner completed her renewal in May 2014, the agency should have applied MAGI rules in determining her financial eligibility for the BadgerCare+ program.

The MAGI test group for financial eligibility is based upon an individual’s tax household, not necessarily on the physical household or family relationships. *BEH §2.3.2* For tax filers, the MAGI group consists of the tax filer, the tax filer’s spouse and any dependents the tax filer is claiming on his/her tax return. *BEH §2.3.2* Thus, the Petitioner’s MAGI test group for financial eligibility consists of five people: the Petitioner, her husband and the three children they intended to claim on their tax return. (See Exhibit 12)

As of April 1, 2014, adults needed to have income at or below 100% of the Federal Poverty Limit or FPL. *BEH §16.1.1* During the time in question, 100% of FPL for five people was \$2325.83 per month. *BEH §50.1- Release 14-01, effective February 1, 2014.*

Under MAGI rules, changes in income that exceed the following levels must be reported by the tenth of the following month: 100%, 133%, 156%, 191%, 200%, 250%, 306%, 350% and 400% FPL. *BEH §27.3*

Further, under MAGI Rules, “all taxable income is counted when determining BC+ eligibility.” *BEH §16.1.2* Thus, under MAGI rules, deductions from household income are allowed for pre-tax deductions that are taken out of the individual’s paycheck, such as health insurance, health savings accounts, retirement contributions, parking and transit costs, child care savings accounts contributions and group life insurance payments. *BEH §16.3.2* Certain tax deductions from IRS form 1040 will also be allowed. *See BEH §16.3.3*

“If the amount or frequency of regularly received income is known, average the income over the period between payments. If neither the amount nor the frequency is predictable, do not average; count income only for the month in which it is received.” *BEH §16.6*

In addition, under MAGI rules, income from child support is not counted. *BEH §16.2, paragraph 40*. Conversely, child support payments are not allowed as deductions from income. *BEH §16.3.1*

The Merits of the Agency's Claim

In the case at hand, the agency contends that the Petitioner went over the 100% FPL income limit in July 2014 and was, therefore, ineligible for BadgerCare+ benefits from July 1, 2014 through December 31, 2014.

Petitioner agrees that an overpayment occurred between September 1, 2014 and December 31, 2014, because her household went over the income limit and she agrees that the overpayment was caused by her failure to report an increase in her household income. However, Petitioner disputes the agency's contention that an overpayment of benefits occurred in July and August 2014.

The agency has not met its burden to prove that a recoverable overpayment of benefits took place in July and August 2014.

Looking at the agency's income determination contained in Exhibit 38, it is apparent that a number of errors are present. First, the agency used the wrong group size. The agency used a group size of 6 to determine the 100% FPL income limit, but the correct MAGI test group size is 5, based upon the Petitioner's May 2014 renewal. (See Exhibit 12)

Second, it appears that the agency may not have correctly calculated the Petitioner's household income. For example, the agency calculated the Petitioner's income for May 2014 to be \$2,672.40, based upon income received from the five paychecks Petitioner provided to the agency on May 29, 2014. (See Exhibit 15; see also Exhibits 27, 37 and 38) However, the agency did not account for the other types of income reported on the paystubs, such as profit sharing and overtime. Further, in its calculations of Petitioner's income for May and June 2014, the agency failed to account for the husband's pre-tax deductions for health insurance and his 401K.

Third, there is a potential notice issue. In the notices sent to the Petitioner on November 25, 2013, April 28, 2014 and June 4, 2014, the agency indicated the Petitioner needed to report when her income went over \$2,664.17, which is the 100% FPL limit for a household of six. (See Exhibits 36, 11 and 16. See also *BEH §50.1- Release 14-01, effective February 1, 2014*) As discussed above, Petitioner's correct MAGI test group size consisted of five people.

Fourth, there is a question regarding whether an overpayment for July and August is even recoverable, since it is likely due to the agency's failure to correctly budget the income reported by the Petitioner when she provided her husband's paystubs on May 29, 2014. (If the agency acted on Petitioner's verification by June 9th and determined the household to be over the 100% FPL income limit, based upon the income reported in the paystubs, the agency should have ended Petitioner's benefits July 1, 2014, but it didn't.)

Based upon the foregoing, it is found that the agency has not met its burden to prove that it correctly established an overpayment for July and August 2014.¹

¹ I leave it to the agency's discretion to determine whether it wants to further investigate the matter.

CONCLUSIONS OF LAW

The Petitioner was overpaid BadgerCare+ benefits for the period of September 1, 2014, through December 31, 2014, due to client error.

THEREFORE, it is

ORDERED

That the agency amend claim # [REDACTED] to rescind the overpayment for July 2014 and August 2014 and to reflect an overpayment only for the months of September 1, 2014 through December 31, 2014.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

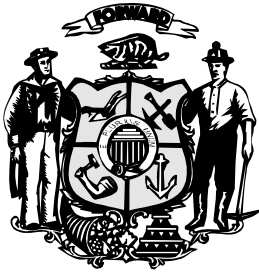
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 13, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]